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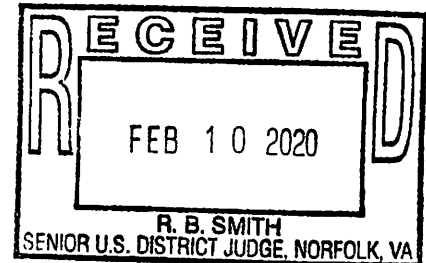
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FILE NO. 121888-1

February 7, 2020

## VIA HAND DELIVERY

Honorable Rebecca B. Smith  
Judge, United States District Court  
600 Granby Street  
Norfolk, VA 23510



*Re: Scientific Research Activities at the wreck of RMS Titanic, 2019 (2:93cv00902-RBS)*

Dear Judge Smith:

We write to respond to RMST's recent periodic report on behalf of EYOS Expeditions, Ltd. and Caladan Oceanic, LLC (#586). In short, the submersible *Limiting Factor* did inadvertently contact the *Titanic* while maneuvering near the ship due to unanticipated currents just as EYOS reported. I understand representatives from NOAA and RMST were on board the ship (and contributed to the report), and the report was promptly forwarded to NOAA. And as soon as I was made aware that a report had been issued and forwarded to some but not all of the recipients designated in your Order, we forwarded it to everyone. And all this was done before the next status conference occurred.

As background, EYOS, led by Rob McCallum, is a world-class expedition coordinator (<https://www.eyos-expeditions.com>). The venture here was sponsored by Caladan Oceanic, LLC, a company dedicated to the advancement of undersea technology which supports expeditions to increase understanding of the oceans (<https://fivedeeps.com>). Caladan owns and operates the research vessel *Pressure Drop* and the submersible *Limiting Factor*, and otherwise funded the venture.

Victor Vescovo is the founder of Caladan. Mr. Vescovo is a Commander, U.S. Navy (Office of Naval Intelligence – Retired) who owns the world's deep-diving record and is the only person to visit the deepest point of the world's five oceans. He was piloting the *Limiting Factor* at the time an unpredictable current resulted in its brief contact with the *Titanic*.

In addition to being a highly-accomplished, record-setting submersible pilot, Mr. Vescovo is a very successful businessman, as a Managing Partner and Co-Founder of Insight Equity. He is also involved in many charitable endeavors and is a noted explorer. For instance, in 2017, Mr. Vescovo became the 12th American to complete the "Explorer's Grand

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Slam,” which involves climbing the highest peak on all seven of the world’s continents (including Mt. Everest) and skiing at least 100 kilometers to both the North and South Poles.

In 2019, he made history’s deepest solo submarine dive in the Pacific’s Mariana Trench, was the first person to do it multiple times, and later became the first person to visit “The Five Deeps” – the deepest points in all five of the world’s oceans. Mr. Vescovo was also the first person to dive the second – and third – deepest points on the ocean’s floor, the Sirena and Horizon Deeps, and also made the first solo dive to the *Titanic. Limiting Factor*, with the approval of the French government and with Mr. Vescovo piloting, also just completed dives to the wreck site of the French submarine *Minerve*, which sank in 1968 with 52 people aboard. During the second of two visits to *Minerve*, which had not been visited previously, the Caladan team placed a memorial plaque on the wreck. Mr. Vescovo is also rated as a multi-engine jet, helicopter, and submersible test pilot. Further, at the time he dove the *Titanic*, Mr. Vescovo had more hours at the controls of the *Limiting Factor*, the very unique, specific submersible used, than any other person in the world and therefore was the most experienced with it.

RMST’s primary concerns appear to be: (i) allegedly not learning of the submersible’s contact with the *Titanic* earlier, and (ii) its desire to obtain proprietary video regarding dives owned by Atlantic Productions and used for an upcoming National Geographic documentary. We will briefly address both of these concerns.

### *RMST’s Knowledge of Contact*

The most recent *Titanic* expedition took place from July 29 to August 4, 2019. EYOS’s Rob McCallum submitted a detailed nine page report (covering much more information than was required in the Court Order) on August 11, 2019. The report was submitted by Mr. McCallum to NOAA, which had previously been EYOS’s liaison with the court.<sup>1</sup> Once it was brought to the attention of undersigned counsel that the report had been prepared and sent to NOAA – but not the Court and RMST – counsel confirmed as much and submitted the report to all concerned on January 7, 2020 (#584), well in advance of the next status conference scheduled for February 20, 2020.

It was inadvertent of EYOS to not initially submit the report to all required parties (there was no “deadline” in the Order to submit the report but no doubt the expectation was

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<sup>1</sup> Hunton Andrews Kurth had been retained to handle the July 3, 2019, hearing, had closed its file after the hearing, and did not learn about the fact that the report had issued and not been submitted to the Court until when notified of this fact by NOAA in December.

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that it would be done promptly and to everyone). The report was submitted to all identified parties after this was brought to EYOS's attention and well before the anticipated status conference. While RMST claims it did not know about the contact earlier, per the Expedition Observation Agreement between EYOS, RMST and Caladan, it did have a representative aboard, its observer P.H. Nargeolet. I understand Mr. Nargeolet has participated in a number of salvage dives at *Titanic* and, as a result, is very familiar with the wreck. It is not clear why RMST apparently was not told about the contact, but it is possible that it was because its representative thought it to be an inconsequential occurrence. It is also important to note the contact was made on a single section of edge-railing near the middle part of the starboard bow – far away from the particular area RMST appears to be most concerned about, the Marconi radio room. In any case, there was no nefarious motive as apparently RMST or its new counsel attempts to attach to this event in its or his communication with the British media.

*The Video*

RMST seeks to require production of video documenting all five submersible dives on the *Titanic*. This video was filmed by Atlantic Productions, a London-based media company that has won multiple Emmy and BAFTA awards and produces programs for outlets such as the National Geographic Channel, the Discovery Channel, and the BBC. Atlantic entered into a contract with Caladan giving Atlantic the right to film the *Titanic* dives and to produce programming using that film. Neither EYOS nor RMST is a party to that contract.

RMST is not entitled to use this status conference proceeding to obtain foreign non-party Atlantic Productions' proprietary video – and EYOS does not have it in any case. Video from the *Titanic* dives is in the possession of Atlantic Productions in London and will be used for a National Geographic *Titanic* documentary.

While EYOS does not have the requested video (and EYOS's counsel has not seen any of it), Caladan has in its possession an approximately 30 second video segment (with multiple camera angles) showing the entirety of the submersible's contact with the *Titanic*. Although the video is Atlantic Productions' copyrighted property, it has given Caladan permission to display this video *in camera* to you with counsel present, if you would find that necessary and helpful. Mr. Vescovo, who was piloting the *Limiting Factor* at the time, believed that although the contact was regrettable, he considered it very minor, no part of the wreck detached, and the incident occurred over a few seconds of a 3+ hour dive in strong and unpredictable currents.

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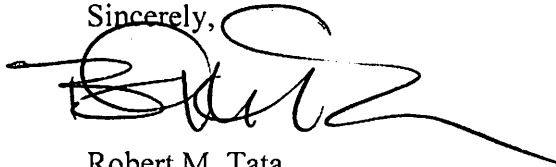
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In addition, Mr. Vescovo is planning to attend the February 20<sup>th</sup> hearing and is happy to answer any questions you have about the contact with the *Titanic*.<sup>2</sup> In short, both EYOS and Caladan want to be completely transparent with you. The video snippet and Mr. Vescovo's answers will give you complete clarity about what happened when the submersible briefly contacted the *Titanic*.

*Conclusion*

RMST's requested relief is unnecessary and unprecedented. Nonetheless, if the Court would find it helpful, Caladan, through its Texas counsel Chris Davis, would agree to bring the video clip displaying the contact and Caladan's founder and the pilot of the submersible, Victor Vescovo, to the status conference on February 20. It would be helpful to know if this is going to be requested or required by February 14, so Mr. Vescovo and Mr. Davis can make travel arrangements. Mr. Vescovo is currently scheduled to begin travel to the Middle East on February 21, 2020, in order to begin a series of science dives in the Red Sea with the Saudi Arabian science community.

Sincerely,



Robert M. Tata

cc: Jackie Rolleri, Esq. (via e-mail)  
David G. Barger, Esq. (via e-mail)  
Kent P. Porter, Esq. (via e-mail)  
Brian A. Wainger, Esq. (via e-mail)  
Matthew C. Lipton, Esq. (via email)  
Chris Davis, Esq. (via email)

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<sup>2</sup> EYOS's Rob McCallum is currently unavailable for the February 20 hearing as he is scheduled to be in New Zealand at the time. He was topside on the ship, as opposed to in the submersible, in any case.